

February 14, 2011

VIA ECF AND COURIER

The Honorable A. Kathleen Tomlinson
United States District Court
100 Federal Plaza, P.O. Box 9014
Courtroom 910
Central Islip, New York 11722

Re: ESI Agreement in *New York SMSA Limited Partnership d/b/a Verizon Wireless et al. v. Town of Hempstead*, 2:10-cv-04997 (LDW) (AKT)

Dear Judge Tomlinson:

In the January 11, 2011 minute order, DE 39, the Court directed the parties to confer and reach agreement on the method by which electronically stored information (“ESI”) shall be produced in this case. The Court’s minute order further provided that the parties must file a letter on ECF by February 14, 2011 advising the Court of the agreement and the procedures that have been put in place.

Pursuant to the Court’s order, counsel for Plaintiffs and Defendants conferred on **February 10, 2011** and reached an agreement on the method of producing ESI. This letter advises the Court of that agreement.

Though the parties presently disagree about the permissible scope of discovery, *see, e.g.*, DE 49, the parties have reached agreement on the production of information the Court deems subject to discovery.

The parties agree that all relevant, responsive, and non-privileged ESI shall be produced as follows: (1) as native files; (2) with Bates numbers prepended to the original native file name; (3) with a delimited text file containing metadata for the native files, including the fields identified on Attachment A, where that metadata exists; and (4) with extracted text, where it exists in the native file. If a party determines that any ESI that shall be produced in this case is unreadable, corrupt, or otherwise unusable (hereafter referred to as “Data Exceptions”), the parties agree to confer and make reasonable efforts to identify and resolve the Data Exceptions.

The foregoing agreement does not address information contained in “structured databases,” which some Plaintiffs, Defendants, and/or third party contractors may maintain and use in the course of their businesses and/or operations. To the extent that data in such a database is relevant and subject to any discovery obligations, the parties agree to meet and confer as to the most reasonable method of identifying and producing such information.

The parties agree that Defendants shall produce all relevant, responsive, and non-privileged paper documents subject to production to Plaintiffs as follows: (1) as scanned, single-page, TIFF images; (2) with OCR text; and (3) with load files for both the Concordance and IPRO document management tool.

The parties agree that Plaintiffs shall produce all relevant, responsive, and non-privileged paper documents subject to production to Defendants as follows: (1) as scanned, multi-page, TIFF images; (2) with OCR text; and (3) with load files for the Summation (DII) document management tool.

As it is anticipated that the volume of ESI and documents produced by Defendants may be small and the foregoing procedures would be disproportionately expensive in that event, the parties agree that in such circumstances Defendants' ESI may be produced simply as native files together with Bates-numbered searchable pdfs (including the metadata they contain) and Defendants' documents may be produced as scanned, multi-page pdf or TIFF images, Bates-numbered, with OCR text. The parties agree to confer in good faith to attempt to resolve any issues relating to this alternative method of production.

The parties agree that any inadvertent disclosure of privileged material within the scope of FRE 502(b) shall not result in a waiver of that privilege and that the inadvertently produced material (1) shall be returned by the receiving party to the producing party promptly upon receipt of written notice identifying such material (along with any and all copies of that material), with the exception that (2) the receiving party within 10 days of such notice may make application to the court under seal for a ruling on whether such material should be returned and may retain a copy of such material solely for use in such application, and (3) the receiving party shall make no use of such material in this case except as may be permitted pursuant to a ruling on such application.

The parties agree that they shall not be obligated to produce deleted data lost as a result of the routine, good-faith operation of an electronic information system, and shall not need to conduct searches of electronic back-up systems except by order of the court on good cause shown.

Respectfully submitted,

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Attachment A - Metadata Fields to be Extracted from ESI

Field #	Field Name	Format	Description
1	BEGDOCNO	Text	Control/Bates number of the file OR Bates number of first page of document (for imaged hard-copy collections only)
2	ENDDOCNO	Text	Bates number of last page of document (for imaged hard-copy collections only)
3	BEGATTACH	Text	BEGDOCNO of the parent email. Emails produced in a format that embeds the attachments within the message (for example, MSG or EML) do not require provision of this field.
4	ENDATTACH	Text	BEGDOCNO of the last attachment. Emails produced in a format that embeds the attachments within the message (for example, MSG or EML) do not require provision of this field.
5	CUSTODIAN	Text	Person, organization, or department from whom materials were collected.
6	AUTHOR	Text	Email "From" data or user/author name from electronic files.
7	RECIPIENT	Text	Email "To" data (semi-colon delimited, if multiple entries)
8	CC	Text	Email "CC" data (semi-colon delimited, if multiple entries)
9	BCC	Text	Email "BCC" data (semi-colon delimited, if multiple entries)
10	MAILSUBJECT	Text	Email subject.
11	MAILDATE	MM/DD/YYYY	Email date sent.
12	MAILTIME	HH:MM:SS	Email time sent, in military time. Please populate down to any children/attachments of the parent email.
13	APPCREATEDATE	MM/DD/YYYY	Application-created document creation date

Attachment A - Metadata Fields to be Extracted from ESI

Field #	Field Name	Format	Description
14	APPCREATETIME	HH:MM:SS	Application-created document creation time, in military time
15	ATTACHMENTS	Text	Semi-colon delimited list of the original file names of any attachments to an email. Emails produced in a format that embeds the attachments within the message (for example, MSG or EML) do not require provision of this field.
16	FILENAME	Text	For emails: Mail subject For attachments and e-files: File name
17	FILE_TYPE	Text	File extension
18	FILESIZE_KB	Numeric	File size in kilobytes
19	HASH_VALUE	Text	MD5 hash value generated for purposes of identification and/or deduplication. (For emails, please identify the data points and methodology used to generate the hash value.)

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2011, the forgoing letter was filed in this case and served on the following persons via CM/ECF unless otherwise noted:

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* Courtesy copy of ECF document sent by
overnight delivery

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